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In the Supreme Court of the United States

OCTOBER TERM, 1932

No. 653

UNITED STATES OF AMERICA, APPELLANT

v.

JOHN G. DARBY

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND

OPINION BELOW

The opinion of the District Court (R. 16–19) has not been officially reported.

JURISDICTION

The order of the District Court sustaining the demurrer to and quashing the indictment was entered December 7, 1932. (R. 20.) Application for direct appeal to this Court was filed and allowed on December 31, 1932. (R. 20–21.) The jurisdiction of this Court rests upon the Act of March 2, 1907, c. 2564, 34 Stat. 1246 (U. S. C., Title 18, Sec. 682), known as the Criminal Appeals Act, and Section 238 of the Judicial Code, as amended by the Act of February 13, 1925 (U. S. C., Title 28, Sec. 345).

QUESTION PRESENTED

Whether, under Section 5209 of the Revised Statutes, as amended, an officer of a member bank in the Federal Reserve System is guilty of making a false entry in the discount register of such bank when, with intent to deceive or defraud, he transcribes, or causes to be transcribed, in that register the name of a person, as comaker or endorser of a promissory note accepted by the bank for discount, with knowledge that such person had not signed or endorsed said note and that such person's purported signature thereon was a forgery.

STATUTE INVOLVED

Section 5209 of the Revised Statutes, as amended by the Act of September 26, 1918, c. 177, Sec. 7, 40 Stat. 972 (U. S. C., Title 12, Sec. 592) provides in part as follows:

> SEC. 5209. Any officer, director, agent, or employee of any Federal reserve bank, or of any member bank * * * who * * * makes any false entry in any book, report, or statement of such Federal reserve bank or member bank, with intent in any case to injure or defraud such Federal reserve bank or member bank, or any other company, body politic or corporate, or any individual person, or to deceive any officer of such Federal reserve bank or member bank, or the Comptroller of the Currency, or any agent or examiner appointed to examine the affairs of

> such Federal reserve bank or member bank, or the Federal Reserve Board; * * * shall be deemed guilty of a misdemeanor, and upon conviction thereof in any district court of the United States shall be fined not more than $5,000 or shall be imprisoned for not more than five years, or both, in the discretion of the court.

STATEMENT

On October 20, 1932, the appellee, John G. Darby, was indicted in the United States District Court for the District of Maryland upon sixteen counts under Section 5209 of the Revised Statutes, as amended, for making eight alleged false entries in the books of the Montgomery County National Bank of Rockville, Maryland. The odd-numbered counts charged the particular entry to have been made with intent to injure and defraud the bank, and the even-numbered counts charged the particular entry to have been made with intent to deceive the officers of the bank and the Comptroller of the Currency. In each instance the false entry charged consisted of the entry by appellee, as assistant cashier of the bank, in the bank's discount register of the name of "Bessie D. Darby," or "B. D. Darby," as comaker or endorser of a described promissory note, on which J. G. Darby appeared as maker, and which had been accepted by the bank for discount, whereas, it was charged, as the appellee well knew, the purported signature of "Bessie

D. Darby" or "B. D. Darby" on such note was a forgery.[1] (R. 1–15.)

The defendant demurred to the indictment (R. 15), and the demurrer was sustained by the District Court (R. 20) on the ground that the offense of making false entries is not committed "where, as here, the transactions of which he [appellee] made entries actually occurred and were entered exactly as they occurred" (R. 15–19). The District Court

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[1] The first count, which is typical of all the others, charged as follows (R. 1):

"* * * the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, * * * on the 26th day of January, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to injure and defraud the said national bank did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount Register, Volume No. —, at Register No. 53006, a certain entry, which said entry was as follows:

"Bessie D. Darby ren
"Rockville, Md.

"which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G. Darby appeared as maker, dated January 20, 1931, in the sum of $419.15 due on March 20, 1931, which had then been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was also signed by the said Bessie D. Darby, of Rockville, Maryland, as maker, whereas in fact, as he, the said John G. Darby then well knew, the said note had not been executed by the said Bessie D. Darby as maker as aforesaid, and the said signature purporting to be the signature of the said Bessie D. Darby on the said note was a forgery; * * *."

certified that its decision was based on its construction of the statute.[2] (R. 20.)

SPECIFICATION OF ERRORS

1. The District Court erred in sustaining the demurrer to and quashing the indictment.

2. The District Court erred in holding that the transactions set forth in the indictment were entered by appellee in the bank's discount register exactly as they occurred.

3. The District Court erred in holding that the transcription into a bank's discount register of the forged signature of the comaker or endorser of a promissory note, when done with intent to deceive or defraud and with knowledge of the forgery, was not a "false entry" under Section 5209 of the Revised Statutes, as amended.

SUMMARY OF ARGUMENT

An entry in the books of a bank which is intentionally made to represent what is not true or does not exist, or which falsely represents an actual

[2] The appellee has filed a statement opposing jurisdiction and a motion to dismiss or affirm based upon the contention that the instant case does not involve the construction of the statute in question. Although the error of this contention is, we think, sufficiently demonstrated by the memorandum of the United States in opposition to appellee's motion to dismiss or affirm, we wish to refer the Court in this connection to *United States* v. *Corbett*, 215 U. S. 233, 236–237. The instant case does not turn on the meaning or sufficiency of the indictment, as argued by appellee, but solely upon the question whether the act charged in the indictment falls within the condemnation of the statute.

transaction is, when made with intent to deceive or defraud, a false entry under Section 5209, R. S., as amended. The signature of a comaker or endorser of a promissory note which has been accepted by the bank is a material part of the note. Accordingly, the transcription into the bank's discount register of the forged signature of the comaker or endorser of a note, when done with intent to deceive or defraud and with knowledge of the forgery, is a false entry within the meaning of the statute.

ARGUMENT

It has been repeatedly held that any entry in the books of a bank which is intentionally made to represent what is not true or does not exist, or which, in a material part, falsely and untruly represents an actual and existing transaction is, when made knowingly and with intent to deceive or defraud, a "false entry," within the meaning of Section 5209 of the Revised Statutes, as amended (p. 2, *supra.*)[3] *Agnew* v. *United States,* 165 U. S. 36, 52–53; *Coffin* v. *United States,* 162 U. S. 664, 683–685; *Morse* v. *United States,* 174 Fed. 539, 548, 551–552, 555 (C. C. A. 2d), certiorari denied, 215 U. S. 605; *United States* v. *Harper,* 33 Fed. 471, 480 (C. C., S. D. Ohio); *United States* v. *Wilson,* 176 Fed. 806, 809 (C. C., S. D. Fla.);

[3] For the requirements generally of an indictment for making false entries under Section 5209, R. S., see *United States* v. *Britton,* 107 U. S. 655, 662–666; *Cochran* v. *United States,* 157 U. S. 286, 293.

United States v. *Warn*, 295 Fed. 328 (D. Idaho). The signature of a comaker or endorser of a promissory note is, of course, a material part of the note. Accordingly, the transcription into a bank's discount register of the forged signature of the comaker or endorser of a note which has been discounted by the bank falsely and untruly represents the transaction, and when done with intent to deceive or defraud and with knowledge of the forgery, as alleged in the indictment here in question, is a false entry within the meaning of the statute.

In *Agnew* v. *United States*, 165 U. S. 36, *supra*, it was contended that the trial court had erred in giving the following instruction on behalf of the Government (p. 52):

> The crime of making false entries by an officer of a national bank with the intent to defraud, defined in the Revised Statutes of the United States, section 5209, includes any entry on the books of the bank which is *intentionally made to represent what is not true or does not exist*, with the intent either to deceive its officers or to defraud the association. The crime may be committed personally or by direction.
>
> Therefore the entry of a slip upon the books of the bank, if the matter contained in that deposit slip is not true, is a false entry. *If the statement made upon the deposit slip is false, the entry of it in the bank and the books of the bank is false.* (Italics ours.)

It was also contended that the trial court erred in refusing to give the following instruction requested by the defendant (p. 52):

> The making of a false entry is a concrete offence which is not committed where the transaction entered actually took place and is entered exactly as it occurred.
>
> The truthful entry of a transaction charged as fraudulent does not constitute a false entry within the meaning of the statute.

The Court held that the instruction, as given, was correct and in accordance with the rule announced in *Coffin* v. *United States*, 162 U. S. 664, *supra*, and that no error was committed in declining to give the requested instruction.[4] See also *United States* v. *Wilson*, 176 Fed. 806, 808 (C. C., S. D. Fla.), *supra*; *United States* v. *Morse*, 161 Fed. 429, 436 (S. D. N. Y.) aff'd after trial, 174 Fed. 539 (C. C. A. 2d); *United States* v. *Warn*, 295 Fed. 328 (D. Idaho) *supra*.[5]

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[4] It should be noted that the requested instruction was copied from the language of this Court in the first *Coffin* case (*Coffin* v. *United States*, 156 U. S. 432, 463), upon which language the District Court in the instant case seems chiefly to have predicated its decision. (R. 18.) A refusal to give an instruction substantially like the requested instruction in the *Agnew* case was also upheld in *Billingsley* v. *United States*, 178 Fed. 653, 663 (C. C. A. 8th).

[5] The views of the courts in this group of cases with respect to the question presented in the instant case are clearly indicated by the following statements in the opinions of those courts:

If, as held in the *Agnew* case, the entry of the details of a deposit slip upon the books of a bank is a "false entry" if the matter contained in the deposit slip is not true, clearly the entry in a bank's discount register of the forged signature of the co-maker or endorser of a promissory note is a false entry.

That the entries in the instant case fall well within the limits of the statute is indicated by decisions which hold that the faithful (i. e., *accurate*)

United States v. *Warn*, 295 Fed. 328, 330 (D. Idaho)—

"* * * an entry or report, made by one knowing the facts, of a note or other instrument as real or genuine, which in truth is forged or spurious, or a mere sham, would fall within the denunciation of the statute."

United States v. *Wilson*, 176 Fed. 806, 808 (C. C., S. D. Fla.)—

"* * * if the fact stated in a slip was known to be untrue, it is a false entry, and copying such false entry in the books with intent to deceive would be a violation of the statute."

United States v. *Morse*, 161 Fed. 429, 436 (S. D. N. Y.), affirmed after trial, 174 Fed. 539 (C. C. A. 2d)—

"It may be the truth that there was a note; but, if the note was 'fictitious,' it is not the whole truth to recite or record or enter it as a genuine note. There is a difference between a false record and the record of a falsehood—between a fraudulent entry and the entry of a fraud. The difference is that the latter exposes the falsity or fraud, while the former does not. If this note was fictitious—e. g., forged to the knowledge of the bank, or unenforceable against the maker by agreement of parties—it was no better than a blank piece of paper, and its inclusion in the 'call loans' was as clearly within the statute as were the entries as bank cash of money not on deposit, * * *."

entry of a sham or fictitious transaction is, if made with intent to deceive or defraud, a false entry under Section 5209, R. S. *Coffin* v. *United States,* 162 U. S. 664, *supra; Morse* v. *United States,* 174 Fed. 539 (C. C. A. 2d), certiorari denied, 215 U. S. 605, *supra; Peters* v. *United States,* 94 Fed. 127, 144–146 (C. C. A. 9th), certiorari denied, 176 U. S. 684; *Billingsley* v. *United States,* 178 Fed. 653, 662 (C. C. A. 8th); *United States* v. *Warn,* 295 Fed. 328 (D. Idaho). See *Hayes* v. *United States,* 169 Fed. 101, 103 (C. C. A. 8th); *State* v. *Cassill,* 70 Mont. 433, 439, 445; *People* v. *Helmer,* 13 App. Div. 426, reversed on other grounds, 154 N. Y. 596; *Reg.* v. *Butt,* 15 Cox's C. C. 564. See also *Lewis* v. *United States,* 22 F. (2d) 760 (C. C. A. 8th), affirmed, 279 U. S. 63.

In *Coffin* v. *United States,* 162 U. S. 664, *supra,* certain commercial paper, not *bona fide* or representing any substantial value, was left at the bank, not as a genuine deposit but as a mere "memorandum deposit to serve for the time being only," for the purpose of giving a certain company an apparent credit upon the books of the bank which in fact it did not have. So far as appears the details of this paper were correctly entered upon the bank's books. The defendant was convicted of falsely entering a credit upon the books of the bank based upon the fraudulent paper and his conviction was affirmed by this Court. The Court held that

the trial court correctly charged the jury as follows (pp. 683–684):

> An entry knowingly and purposely made on the books of the bank, with intent to deceive or defraud, as charged, *which represents as an actual transaction, one which does not and did not exist,* or an entry knowingly and purposely made, with intent to deceive and defraud, as charged, *which in a material part falsely and untruly represents an actual and existing transaction, would constitute a false entry within the meaning of the statute.* If, however, the entry truly represents an actual *bona fide* transaction, then it would not constitute a false entry.
>
> * * * * *
>
> But if the paper was never accepted or discounted by him for the bank, but was simply left with the bank as a mere memorandum and not as a deposit and *for the fraudulent purpose of enabling fictitious entries to be made on the books of the bank* with the intent to deceive or defraud as charged, such entry on the books of the bank would constitute a false entry. (Italics ours.)

In the instant case the transcription into the bank's discount register of the forged name of the comaker or endorser of the particular note in question clearly represented as an actual transaction one which did not exist. Moreover, it appears that each of the notes was actually signed by the ap-

pellee and discounted by the bank. Accordingly, the transcription into the register of the forged signature of the comaker or endorser falsely represented an actual transaction between the appellee and the bank.

In *Morse* v. *United States,* 174 Fed. 539 (C. C. A. 2d), certiorari denied, 215 U. S. 605, *supra,* the defendant, an officer of a bank, had used the bank's money for the purchase of speculative securities. To conceal the real nature of these transactions he caused persons of no financial responsibility and under his control to sign notes to the bank which purported to be secured by the securities so purchased. The transactions were entered upon the books of the bank as loans by employees who were ignorant of their real nature. The actual book entries were, of course, accurate transcriptions from the notes. In sustaining defendant's conviction for making false entries in the books of the bank and in reports to the Comptroller of the Currency, the court said (p. 548):

> The entries in question were false because *they stated the existence of transactions which the jury found never took place.* They were not entries of improvident or fraudulent loans, but entries as loans of transactions that should have been entered as sales to the bank of speculative stocks. There is a distinction between a real, although fraudulent, note, and a fictitious or sham note which represents no real transaction. (Italics ours.)

With respect to the counts charging false entries in reports to the Comptroller, the court further said (pp. 551–552):

> The main contention on this branch of the case is that the alleged false entries are not false, but faithfully describe actual occurrences. The reports to the Comptroller which form the gravamen of these counts are, of course, taken from the books of the bank and do accurately and faithfully state what the books themselves disclose. But the real test of their truth or falsity is whether or not they faithfully represent the original transaction—that they were repeated automatically through a long series of books and documents is immaterial.

In the *Morse* case, as in the instant case, the actual entries were faithful transcriptions of the details of the notes in question; indeed, in the *Morse* case the actual entries were made by innocent clerks. But, so far as the defendant, who caused the entries to be made, was concerned, the entries were "false" within the meaning of the statute because "they stated the existence of transactions which * * * never took place." In the instant case the signature of the comaker or endorser of each note was forged. The entry of the forged name of such comaker or endorser in the books of the bank was false because, so far as the comaker or endorser was concerned, it represented the existence of a transaction which had never occurred.

The District Court sustained the demurrer to the indictment largely upon certain language of this Court in the first *Coffin* case (*Coffin* v. *United States,* 156 U. S. 432, 463). There the Court said that the trial court had erred in a certain instruction with respect to the counts of an indictment charging false entries under Section 5209, R. S., because the instruction gave the impression "that an entry would be false, though it faithfully described an actual occurrence, unless the transaction which it represented involved full and fair value for the bank." With respect to the erroneous charge the Court, in an express *dictum,* further said (p. 463):

> The thought thus conveyed implied that the truthful entry of a fraudulent transaction constitutes a false entry within the meaning of the statute. We think it is clear that the making of a false entry is a concrete offence which is not committed where the transaction entered actually took place, and is entered exactly as it occurred.

This language, even if not limited by the later decisions of the Court in the second *Coffin* case and in the *Agnew* case, *supra,* lends no support to the trial court's decision in the instant case, since here the transactions involved (i. e., the purported making and endorsing of the notes by "Bessie D. Darby," or "B. D. Darby") did not actually take place, and were not entered as they actually occurred.

The District Court also relied upon *Cooper* v. *United States,* 13 F. (2d) 16 (C. C. A. 4th), and *United States* v. *Young,* 128 Fed. 111 (M. D. Ala.).[6] In the *Cooper* case the defendant, an officer of a bank, endorsed and discounted at the bank an accommodation note made by an insolvent friend at the defendant's request. The defendant thereupon entered the amount of the note to the credit of his account, apparently for the purpose of making his liability to the bank appear less than it really was. Relying on the *dictum* in the first *Coffin* case, above quoted, the court decided that the entry was not a false entry because the transaction entered actually took place and was entered exactly as it occurred. In the *Young* case the indictment charged the defendant, cashier of a bank, with falsely entering in the "cash items" of the bank the amount of a worthless and fraudulent check. In sustaining a demurrer to the indictment the court said that the fraud which entered into the taking of the check by the bank did not obliterate the fact that such check was actually taken

[6] The District Court also cited *Dow* v. *United States,* 82 Fed. 904 (C. C. A. 8th), and *Twining* v. *United States,* 141 Fed. 41 (C. C. A. 3d). We think these cases are clearly inapplicable. The *Dow* case involved an obviously erroneous charge to the jury because it ruled, in effect, "that the reception and crediting to a third party of a check which created an overdraft was the making of a false entry on the books of the bank." In the *Twining* case the decision seems clearly to have been rested upon the ground that there was no evidence that the entries in question were fraudulent or that the defendant had caused them to be made.

by the bank in a transaction with the cashier who truly recited the fact upon the books.

Although arising upon differing facts, we believe that the *Cooper* and *Young* cases are erroneous in principle and inconsistent with the *Coffin, Morse, Hayes, Warn,* and other cases above cited. But even the *Cooper* and *Young* cases do not sustain the decision of the court below. Where, as in the *Cooper* case, a fraudulent entry is made of the note of an insolvent, or where, as in the *Young* case, a fraudulent entry is made of a worthless check, the bank records may be said, in a certain sense, to represent the actual facts, since the bank in fact possesses a note or check signed by the person whose signature appears on the note or check. Where, as in the instant case, an entry is made of a forged signature on a note, the representation in the bank's records is necessarily untrue, and the bank does not possess a note signed by the person whose name appears on the note and in its records.

While, concededly, as pointed out by the court below, it "is not the function of the court to strain the language of a statute unless there is clear justification for so doing" (R. 19), we think that the construction placed upon Section 5209, R. S., by the trial court unduly limits the plain meaning of the language used. In a case involving the construction of that section this Court has said that (*United States* v. *Corbett,* 215 U. S. 233, 242)—

> The rule of strict construction does not require that the narrowest technical meaning

> be given to the words employed in a criminal statute in disregard of their context and in frustration of the obvious legislative intent.

To hold, as the trial court did, that the entries here in question were not false because they faithfully described the instruments as written when they were known to be forged is, indeed, giving to the statute "the narrowest technical meaning." The extraordinary consequences of the results thus produced are apparent. If a bank official enters in the bank records a note which is signed only by A as if it were signed by A and B, the entry is necessarily false. But the court below held, in effect, that if the official first forges the name of B to the note and then transcribes the details of the note into the bank records, the entry is not false. Mere statement discloses the error in the court's construction.

The purpose of Section 5209, R. S., was to enable the Comptroller of the Currency to ascertain from time to time the true condition of a bank, not only for the purpose of detecting offenses but for the purpose of keeping the bank in line with the requirements of the statutes and correcting improper practices. *United States* v. *Corbett,* 215 U. S. 233, 241–242; *Billingsley* v. *United States,* 178 Fed. 653, 659 (C. C. A. 8th), *supra; Morse* v. *United States,* 174 Fed. 539, 547 (C. C. A. 2d), *supra; United States* v. *Wilson,* 176 Fed. 806, 808 (C. C., S. D. Fla.), *supra.* We think that the decision of the

court below not only does violence to the language of the statute but fails to give effect to its obvious purpose.

CONCLUSION

The order of the District Court sustaining appellee's demurrer to and quashing the indictment should be reversed.

Respectfully submitted.

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